

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

AUTO-OWNERS INSURANCE COMPANY
on behalf of itself and all others similarly situated,

Plaintiffs

v.

AUTO PARTS INDUSTRIAL, CO., LTD;
CORNERSTONE AUTO PARTS, LLC;
GORDON AUTO BODY PARTS;
GORDON AUTO BODY PARTS USA CORP.
JUI LI ENTERPRISES COMPANY LTD.;
TAIWAN KAI YIH INDUSTRIAL CO., LTD.;
and TYG PRODUCTS, L.P.

Defendants.

Case No. 2:11-cv-00131

**PLAINTIFF AUTO-OWNERS
INSURANCE COMPANY'S
MOTION FOR VOLUNTARY
DISMISSAL WITHOUT
PREJUDICE**

Plaintiff Auto-Owners Insurance Company (hereinafter referenced as "Plaintiff"),
by and through their counsel, Roberts Law Firm, P.A., Barnow and Associates, P.C., and
Ademi & O'Reilly, LLP, for its Motion for Voluntary Dismissal Without Prejudice,
states as follows:

1. Plaintiff moves to voluntarily dismiss this action without prejudice,
pursuant to Fed. R. Civ. P. Rules 41(a) and 23(e). Rule 41(a)(1) provides:

(a) Voluntary Dismissal.

(1) By the Plaintiff.

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2,
and 66 and any applicable federal statute, the plaintiff may dismiss
an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an
answer or a motion for summary judgment;

...

(B) *Effect.* Unless the notice or stipulation states otherwise, the
dismissal is without prejudice. But if the plaintiff previously
dismissed any federal- or state court-action based on or including

the same claim, a notice of dismissal operates as an adjudication on the merits.

2. This lawsuit has not been previously filed by the Plaintiff nor has it been certified as a class action. In addition, none of the Defendants have filed answers or motions for summary judgment in this lawsuit.

3. Fed. R. of Civ. P. 23(e) provides that, “The claims, issues, or defenses of a **certified class** may be settled, voluntarily dismissed, or compromised only with the court’s approval.” (emphasis added). Because this case has not been certified, the limitation of Rule 23(e) does not apply in this case.

4. Further, Fed. R. Civ. P. 23.1(c) applies to derivative actions, Fed. R. Civ. P. 23.2 applies to actions relating to unincorporated associations, and Fed. R. Civ. P. 66 applies to receivers. This action does not involve a derivative action, an action relating to unincorporated associations, or an action involving a receiver. Thus, none of the limitations listed in Rule 41 are applicable in this action.

5. Therefore, pursuant to Fed. R. Civ. P. Rules 41 and 23(e), Plaintiff is not required to obtain court approval to voluntarily dismiss this action without prejudice.

WHEREFORE, for all the above reasons, Plaintiff Auto-Owners Insurance Company respectfully moves for a voluntary dismissal of the Third-Party Payor Complaint-Class Action for Damages and Injunctive Relief, without prejudice, and for all other relief deemed just and appropriate.

Dated: February 11, 2011

Respectfully submitted,

/s/Michael L. Roberts

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***Attorneys for Plaintiff Auto-Owners
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situated***